Supreme Court, U.S.
FILED
SEP 27 1995
OFFICE OF THE CLERK

CASE NO. 95-542

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

RICHARD EDWARD LEON, SR.

Petitioner,

versus

THE SUPREME COURT OF FLORIDA and
THE FLORIDA BOARD OF BAR EXAMINERS

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO
THE SUPREME COURT OF FLORIDA

APPENDIX
VOLUME ONE

Michael L. Kinney
3128 West Kennedy Blvd.
Tampa, FL 33609-3093
(813) 878-5445

Counsel for Petitioner

130 pp

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DOCUMENT 1

Supreme Court Decision Denying

Petition for Review of Findings of Fact

and Conclusions of Law

IN THE SUPREME COURT OF FLORIDA

FRIDAY, MAY 12, 1995

FLORIDA BOARD OF BAR EXAMINERS

RE: R.E.L. * CASE NO: 84,786
*
*

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C O N F I D E N T I A L

The Petition for Review of Findings of Fact and Conclusions of Law of the Florida Board of Bar Examiners filed in the above cause is hereby denied.

GRIMES, C.J., OVERTON, SHAW, KOGAN, HARDING, and WELLS concur ANSTEAD, J., dissents

A True Copy

TEST:

TC
cc: Mr. Thomas A. Pobjecky
Ms. Kathryn E. Ressel
Mr. Henry M. Coxe, III
Mr. Michael L. Kinney

/s/ By T. Carroll, Deputy Clerk
Sid J. White [seal]
Clerk, Supreme Court

DOCUMENT 2

Findings of Fact and Conclusions of Law of

The Florida Board of Bar Examiners

In Re: Application of
Richard Edward Leon, Sr.
For Admission to
The Florida Bar

BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

IN RE: Application of)
RICHARD EDWARD LEON, SR)
for Admission to)
The Florida Bar)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

FINDINGS BACKGROUND

The applicant, Richard Edward Leon, Sr., was born on June 24, 1934 in Tampa, Florida. He completed his secondary education in Tampa, Florida in 1952. The applicant attended the University of Tampa from August 1952 to May 1953 and also June 1955 to February 1960, when a Bachelor of Science degree was awarded him. Applicant Leon entered Stetson Law School in February 1960 and attended until July 1962. He enrolled in Samford University Cumberland Law School in September 1962 and the degree of Juris Doctor was conferred upon him in February 1964. The applicant entered Universidad Mudial Dominican Isabel Azuiar in the Dominican Republic in July 1987 and graduated in August 1990 with a Doctorate in Medicine.

The applicant was initially admitted to The Florida Bar in 1966. The applicant was subsequently disbarred by order of the Supreme Court of Florida issued June 1987.

The applicant sought readmission to The Florida Bar by filing an Application for Admission to The Florida Bar on June 12, 1992 and to the Florida Bar Examination on May 27, 1992. He

successfully completed the July 1992 General Bar Examination and the November 1992 Multi-State Professional Responsibility Exam.

During the course of the usual background investigation conducted by the board, certain items of information that reflected adversely upon the applicant's fitness under the provisions of Article III, Section 2 of the Rules of the Supreme Court of Florida Relating to Admissions to the Bar came to the Board's attention. An extensive investigation of the applicant's activities in question was undertaken.

The applicant was invited to appear before the Board for an investigative hearing and he did so appear on June 18, 1993. Following the investigative hearing, the Board determined that Specifications should be prepared and served upon the applicant and that the matter of his character and fitness be considered at a formal hearing.

The Specifications were served upon the applicant on September 3, 1993. The applicant was advised of his right to a formal hearing on the Specifications and the right to present witnesses and any other evidence that might be pertinent to the

issues. The Board's authority to issue subpoenas was made available to the applicant.

The applicant filed a response to the Specifications on October 12, 1993. By letter dated November 9, 1993, the applicant's attorney requested that his client's hearing be scheduled during the Board's July 1994 meeting.

The formal hearing was convened on July 15, 1994 in Tampa, Florida. The applicant appeared at the hearing and was represented by Michael L. Kinney, Esquire and J. Clint Brown, Esquire.

The Specifications previously served upon the applicant included four charges that read as follows:

Specification 1

> That while serving as a Florida circuit court judge and as a member of The Florida Bar, you were investigated by the Judicial Qualifications Commission relative to your engaging in ex parte communications with Chief Circuit Court Judge Arden Mays Merckle in relation to the criminal case of Alisa D. Avery. That the Judicial Qualifications Commission filed a notice of Formal Charges in five counts against you on April 20, 1983. That a six count Amended Notice of Formal Charges was filed against you on May 13, 1983. That you were subsequently adjudicated guilty by the Commission on four of the counts the circumstances of which are clearly set forth in the Commission's Findings of Fact, Conclusions of Law and Recommendations attached

here as Exhibit "A." The Supreme Court of Florida subsequently upheld the Commission's Findings and ordered your removal from judicial office.

Specification 2

That you were indicted on July 13, 1983 by a Hillsborough County grand jury on two counts of perjury, one count of official misconduct, one count of bribery and one count of unlawful compensation. That a copy of the Indictment is attached hereto as Exhibit "B." That you were subsequently tried by a jury and found guilty on December 14, 1993 on the perjury counts and one count of official misconduct. That the appellate court later set aside your conviction on the count of official misconduct and vacated the sentence as the underlying statute had been held unconstitutionally vague. That you were sentenced to serve five years probation, fined $5,000.00 in court costs and ordered to perform 1,000 hours of community service with HRS. That a copy of the Judgment and Probation Order is Exhibit "C."

Specification 3

That you were admitted to The Florida Bar in 1966. That by order of the Supreme Court of Florida issued on June 11, 1987, you were disbarred from the practice of law based upon your felony convictions and related removal from judicial office. That a copy of the Court's disbarment order is attached as Exhibit "D."

Specification 4

That you continue with a pattern of dishonesty as demonstrated by:

(A) You continue to deny the facts surrounding the alteration of Alisa D. Avery's criminal sentence which ultimately resulted in your conviction on two counts of perjury. Specifically, you relayed to the

Board during the application process and during the investigative hearing that your observance of Ms. Avery being fingerprinted prompted your ex parte conversation with Judge Merckle.

That these statements to the Board are false or lacking in candor in that the JQC and the Grand Jury found your conversation with Ms. Avery's father led to your conferring with Judge Merckle, rather than your viewing her in the fingerprinting process.

That said response that on the day of Alisa Avery's sentencing you saw her being fingerprinted from your office and that was the reason for your going to the office of Judge Merckle was false, misleading or lacking in candor. That you went to Judge Merckle's office, in truth and in fact, after conferring with Alisa Avery's father, Arthur Avery, Sr.

(B) That you appeared before the division of the Board on June 18, 1993 at which time you were questioned on matters material to the Board's investigation into your character and fitness for admission to The Florida Bar. That at said hearing you gave the following testimony under oath in response to the following questions:

Q. Are you guilty of perjury?

A. I did not commit perjury. I did not commit perjury. I have had a very, very law-abiding life. I've raised my family as a law-abiding citizen. I was guilty of lying to the investigator for the JQC. I admit that and that was a colossal mistake and I'm not guilty of perjury.

Q. Were you under oath when you testified before the JQC?

A. Yes, sir.

Q. I'm not an attorney. Would you describe to me, please, what is perjury?

A. Perjury is being under oath and giving a false statement.

Q. Well, you told us that you lied to the JQC--

A. Yes, sir.

Q. -- under oath.

A. No, sir.

Q. That's what you told us before, "I lied to the JQC."

A. Yes, sir, investigator, but that's not under oath, sir.

Q. Subsequently under oath you didn't lie to the JQC?

A. I was convicted of lying to the JQC. Your question was did I commit perjury and I did not commit perjury.

That said testimony that you did not commit perjury was false, misleading and lacking in candor in that you were convicted of perjury for having lied to the JQC.

(C) Additionally, that at said investigative hearing you testified that you recanted your false statements to the JQC's investigator before Judge Merckle did. That said testimony was false, misleading or lacking in condor because you did not recant until after discovering Judge Merckle was recanting.

(D) Further, that you told an investigator from the Florida Parole Commission and the Office of Executive Clemency on or about April, 1992 that you were pursuing medical licensure and not a career in law. That said statements were false, misleading or lacking in candor in that you are currently seeking admission to the bar in order to practice and have not pursued medical licensure since July, 1991.

FINDINGS OF FACT

Specification 1 addresses the applicant's removal from judicial office following the Supreme Court of Florida's upholding of the Judicial Qualification Commission's ("JQC") recommendation that he be removed. Specifically, while serving as a Florida circuit court judge and as a member of The Florida Bar, the applicant was adjudicated guilty by the JQC on the following four counts:

(1) Improperly participating in ex parte communications with Circuit Judge Arden Mays Merckle about the criminal cases of Alisa Dean Avery; improperly securing the alteration of a sentence imposed on the defendant Avery; improperly engaging in repeated ex parte communications with the State Attorney's Office about the disposition of the Avery case; and improperly fraternizing with the defendant Avery's father while his daughter's case was

pending before the Criminal Justice Division of the Circuit Court for the Thirteenth Judicial Circuit on which the applicant sat.

(2) Engaging in the sale of land to the defendant Avery's father when the defendant's cases were pending before the court on which he sat.

(3) Conspiring with Judge Merckle to deny their ex parte communications, and then implementing this scheme by denying the same in response to inquiries by the press and by a JQC investigator.

(4) Falsely stating on two occasions to a JQC investigator that the applicant had not had contact with the defendant Avery's father the day of her sentencing; falsely stating under oath that the statements given to the JQC investigator were true; falsely stating under oath that his ex parte communications with Judge Merckle the day of the sentencing were the result of the applicant having seen the defendant being fingerprinted, when actually they resulted from his contact with the defendant's father.

The JQC's findings, conclusions and recommendation of removal were reviewed and upheld by the Supreme Court.

Specification 2 addresses the applicant's criminal conviction on two counts of perjury and on one count of official misconduct. The perjury convictions were subsequently upheld on appeal in Leon v. State of Florida, 474 So. 2d 832 (Fla. 2d DCA 1985).

The applicant filed a sworn Amended Answer and Affirmative Defenses to Specifications ("Answer") executed by him on October 12, 1993. In his Answer and in his sworn testimony, the applicant admitted the first two Specifications. Accordingly, the Board finds that Specifications 1 and 2 have been proven. The language of Specifications 1 and 2 reproduced above under the Findings Background is adopted by the Board as its specific findings of fact.

As to proven Specification 1, the Board finds that it is, standing alone, disqualifying for admission to the Florida Bar. As to proven Specification 2, the board finds that it is, standing alone, disqualifying for admission to the Florida Bar.

Specification 3 addresses the applicant's disbarment in Florida in 1987 based on his felony convictions (see Specification 2) and related removal from judicial office (see Specification 1). In his Answer and during the formal hearing, the applicant admitted that his disbarment was based on his felony convictions, but denied that

it was based on his removal from judicial office. The Supreme Court, however, after noting the applicant's removal from office and subsequent convictions for perjury, disbarred the applicant because of the "nature of [his] actions," demonstrating that the Court considered the circumstances underlying both his felony convictions and his removal from office. The Florida Bar v. Leon, 510 So. 2d 873 (Fla. 1987). The Board finds that the facts giving rise to the disqualification from office and the felony convictions are sufficiently indistinguishable, that the applicant was on notice of the substance of the allegations and that they are proven. The Board further finds that this disbarment and its underlying circumstances standing alone disqualify him for admission to The Florida Bar.

Specification 4 addressed the applicant's continued dishonesty about his removal from judicial office and his felony convictions. In his Answer and during the formal hearing, the applicant denied the allegations in Specification 4 and in fact essentially denied the factual underpinnings of Specifications 1, 2, and 3. Actual evidence of the matters giving rise to the removal, criminal convictions and disbarment was not presented at the formal hearing.

Therefore, based on the record before it, the Board finds that the evidence is insufficient to support the allegations of Specification 4 and it is not proven.

During the formal hearing, the applicant urged the Board to conclude that he had been rehabilitated as provided by applicable rules. He called numerous witnesses who testified to his good character and moral standing; his professional ability; his lack of malice concerning his removal, disbarment and convictions; and his desire to conduct himself in exemplary fashion in the future. The applicant offered proof of his 1000 hours of community service, followed by three or four months of paid additional work at the Department of Health and Rehabilitative Services ("HRS"); his own testimony that he proved medical assistance to the poor while he attended medical school; and his work as a paralegal as evidence of his rehabilitation. The applicant further claimed that injuries and taking care of his family, including putting his children through college, have kept him from doing other community service. The applicant has failed to offer clear and convincing evidence of his rehabilitation as required by law.

The applicant's completion of 1000 hours of community service at HRS was required as part of his criminal sentence. Although this would constitute satisfaction of "strict compliance with the specific conditions of any . . . judicial . . . order" (see Fla. Bar Admiss. R., Art. III, §4.e.(1)), no evidence exists that he contributed a single additional hour of voluntary community service to the HRS. Simply stated, had the applicant not performed the 1,000 hours of work at HRS he would have exposed himself to a probation violation and potential prison sentence.

The applicant's subsequent work at HRS and as a paralegal was paid, not voluntary. As to the applicant's medical assistance to the poor, no evidence exists, through independent testimony or documentation, that would verify this work was more than that required of all medical students as part of the medical school curriculum. Finally, the applicant did not present any evidence showing the type and extent of his injuries that allegedly prevented him from performing community service. The length of time the applicant has had to perform affirmative steps showing rehabilitation is significant.

Without such evidence, the applicant has not presented sufficient positive actions indicating that he has undertaken a useful and constructive place in society or that he has provided service to his community. Such community service is an implied obligation of members of the bar and, thus, those seeking admission to the bar. See **Fla. Bar Admiss. R., Art. III, §4.e(7).** Such positive actions and community service are particularly imperative in the applicant's case given the egregious nature of his misconduct and the position of highest trust that he betrayed as a judge and as a member of The Florida Bar. Instead, the applicant has merely shown that he is now living as and doing those things he should have done throughout life, such as complying with the terms of his sentence, working and supporting his family. See Fla. Bar Admiss. R., Art. III, §4.e(7).

Upon consideration of the applicant's Answer, the exhibits introduced at the formal hearing, and the formal hearing testimony, the Board finds that Specifications 1, 2 and 3 are conclusively proven. The Board further finds that the applicant's evidence fails to mitigate the seriousness of any of the proven allegations. Rarely is this board confronted with conclusive evidence of moral

turpitude rising to the level of egregiousness as exists on this record, and the level of proof reasonably demanded to establish rehabilitation is lacking.

The Board finds that the applicant's formal hearing presentation completely failed to establish satisfactory rehabilitation by clear and convincing evidence as required by **Fla. Bar Admiss. R., Art. III, §4.e(7).**

CONCLUSIONS OF LAW

Based upon the findings set forth above, the Board concludes that the proven allegations of Specifications 1, 2 and 3 are individually and collectively disqualifying for admission to the Florida Bar. Such proven allegations establish that the applicant, while a circuit judge and a member of The Florida Bar, engaged in egregious misconduct for which the applicant was found, beyond a reasonable doubt, guilty of perjury. This conviction for a crime of the highest moral turpitude was reviewed and upheld on appeal. Leon v. State of Florida, 474 So. 2d 832 (Fla. 2d DCA 1985).

Given those circumstances, the applicant appeared before the Board with the difficult burden of demonstrating his character and fitness for returning to the Bar. In reaching its conclusion as to the applicant's current character and fitness to return to the practice of law, the Board is guided by the following factors contained in Fla. Bar Admiss. R., Art. III, §2.c:

(1) the applicant's age at the time of the conduct;
(2) the reliability of the information concerning the conduct;
(3) the reliability of the information concerning the conduct;
(4) the seriousness of the conduct;
(5) the factors underlying the conduct;
(6) the cumulative effect of the conduct or information;
(7) the evidence of rehabilitation;
(8) the applicant's positive social contributions since the conduct;
(9) the applicant's candor in the admissions process;
(10) the materiality of any omissions or misrepresentations.

In applying the above-listed factors to the applicant's case, the Board observes that the applicant was 48 years of age, had been an attorney for over 15 years, and a judge for at least four years at the time of his misconduct. Despite his age, experience, and the high standards expected of one holding the position of Circuit Judge, the applicant abused his position through his misconduct outlined above in the Findings of Fact. Moreover, he then compounded this misconduct through false statements and perjury. The seriousness

of such behavior by one who has taken an oath to uphold the law is uncontested.

Given the seriousness of the applicant's misconduct, he was required to produce clear and convincing evidence of his rehabilitation. As noted above in the Findings of Fact, although the applicant claims rehabilitation, he failed to offer satisfactory evidence of it. The especially outrageous nature of the applicant's crime and the position of absolute trust that the applicant betrayed as a judge and as a member of The Florida Bar demand proof of such rehabilitation. The Board concludes that the applicant totally failed in this respect.

It is, therefore, the conclusion of the Board that the evidence before it as set forth in the foregoing Findings clearly and unequivocally establishes that the applicant fails to meet the standards of conduct and fitness required under the provisions of Fla. Bar Admiss. R., Art. III, §2.

RECOMMENDATION

WHEREFORE, the Board recommends that Richard Edward Leon, Sr. not be admitted to The Florida Bar under the provisions

of Article VII of the Rules of the Supreme court of Florida Relating to Admissions to the Bar.

DATED this 30th day of September, 1994.

Kathryn E. Ressel
Deputy Executive Director
Florida Board of Bar Examiners

Original: Michael L. Kinney, Attorney for Applicant

CERTIFIED MAIL NO.: Z 751 816 477
RETURN RECEIPT REQUESTED

Copy: Henry M. Coxe, III, Board's Attorney

DOCUMENT 3

Order Denying
Motion for Rehearing

IN THE SUPREME COURT OF FLORIDA

THURSDAY, JUNE 29, 1995

FLORIDA BOARD OF BAR EXAMINERS

RE: R.E.L. * CASE NO: 84,786
*
*
****

C O N F I D E N T I A L

The Motion for Rehearing filed in the above cause is hereby denied.

GRIMES, C.J., OVERTON, SHAW, KOGAN, HARDING, WELLS and ANSTEAD, JJ., concur

A True Copy

TEST:

/s/ By T. Carroll Deputy Clerk
Sid J. White [seal]
Clerk, Supreme Court

TC

cc: Mr. Thomas A. Pobjecky
Ms. Kathryn E. Ressel
Mr. Henry M. Coxe, III
Mr. Michael L. Kinney

DOCUMENT 4

Corrected Petition for Review of

Findings of Fact and Conclusions of Law of

The Florida Board of Bar Examiners

In Re: Application of
Richard Edward Leon, Sr.
For Admission to
The Florida Bar

IN THE SUPREME COURT OF FLORIDA

IN RE: APPLICATION OF	)	
RICHARD EDWARD LEON, SR	)	CASE NO: _____
FOR ADMISSION TO	)	BAR NO: 61461
THE FLORIDA BAR	)	

CORRECTED

PETITION FOR REVIEW OF

FINDINGS OF FACT

AND

CONCLUSIONS OF LAW OF

THE FLORIDA BOARD OF BAR EXAMINERS

MICHAEL L. KINNEY, ESQUIRE
Florida Bar #43085
Post Office Box 18055
Tampa, Florida 33679-8055
(813) 875-5445
(813) 872-8125 (Fax)
Attorney for Applicant,
RICHARD E. LEON, SR.

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Appendix

RECORD REFERENCES

The transcript of the Formal Hearing before The Florida Board of Bar Examiners will be referred to by the letters "TT ___" followed by the appropriate page references.

The Findings of Fact and Conclusions of Law will be referred to as "Findings ___" followed by the appropriate page references.

Documentary evidence will be referred to as:

"Board's Exhibit __"

Applicant's Exhibit __"

Other portions of the Record will be referred to as titled or by appropriate description.

JURISDICTION

Applicant, RICHARD E. LEON, SR. (Applicant) being dissatisfied with the Findings of Fact and Conclusions of Law of The Florida Board of Bar Examiners, submits this Petition for Review pursuant to Article III, §4b. of the Rules of the Supreme Court of Florida relating to Admissions to the Bar.

STATEMENT OF THE FACTS

The Applicant was admitted to practice law in Florida in June of 1966 and became circuit judge in Hillsborough County, Florida, in January, 1973. Applicant was removed from office by this Court in November of 1983 and then disbarred from this Court on June 11, 1987 (Findings P. 4).

Applicant was indicted on July 13, 1983 on two counts of perjury and one count of official misconduct. He was convicted but the official misconduct charge was reversed on appeal.

Applicant was placed on probation, fined $5,000.00 and ordered to perform one thousand hours of community service (Findings P. 4).

After completing his community service, Applicant obtained a Doctorate in Medicine in the Dominican Republic (Findings P. 2) and in 1992 received a full pardon for the convictions (TT 9-15).

Applicant reapplied for readmission to The Florida Bar and successfully completed the examination in November of 1992 (Findings P. 2).

The Board served specifications concerning Applicant's character and fitness including four "charges" as follows:

Specification 1

> That while serving as a Florida circuit court judge and as a member of The Florida Bar, you were investigated by the Judicial Qualifications Commission relative to your engaging in ex parte communications with Chief Circuit Court Judge Arden Mays Merckle in relation to the criminal case of Alisa D. Avery. That the Judicial Qualifications Commission filed a notice of Formal Charges in five counts against you on April 20, 1983. That a six count Amended Notice of Formal Charges was filed against you on May 13, 1983. That you were subsequently adjudicated guilty by the Commission on four of the counts the circumstances of which are clearly set forth in the Commission's Findings of Fact, Conclusions of Law and Recommendations attached here as Exhibit "A". The Supreme Court of Florida subsequently upheld the Comm-

ission's Findings and ordered your removal from judicial office.

Specification 2

That you were indicted on July 13, 1983 by a Hillsborough County grand jury on two counts of perjury, one count of official misconduct, one count of bribery and one count of unlawful compensation. That a copy of the Indictment is attached hereto as Exhibit "B". That you were subsequently tried by a jury and found guilty on December 14, 1993 on the perjury counts and one count of official misconduct. That the appellate court later set aside your conviction on the count of official misconduct and vacated the sentence as the underlying statute had been held unconstitutionally vague. That you were sentenced to serve five years probation, fined $5,000.00 in court costs and ordered to perform 1,000 hours of community service with HRS. That a copy of the Judgment and Probation Order is Exhibit "C".

Specification 3

That you were admitted to The Florida Bar in 1966. That by order of the Supreme Court of Florida issued on June 11, 1987, you were disbarred from the practice of law based upon your felony convictions and related removal from judicial office. That a copy of the Court's disbarment order is attached as Exhibit "D".

Specification 4

That you continue with a pattern of dishonesty as demonstrated by:

(A) You continue to deny the facts surrounding the alteration of Alisa D. Avery's criminal sentence which ultimately resulted in your conviction on two counts of perjury. Specifically, you relayed to the Board during the application process and during the investigative hearing that your observance of Ms. Avery being fingerprinted prompted you ex parte conversation with Judge Merckle.

That these statements to the Board are false or lacking in candor in that the JQC and the Grand Jury found your conversation with Ms. Avery's father led to your conferring with Judge Merckle, rather than your viewing her in the fingerprinting process.

That said response that on the day of Alisa Avery's sentencing you saw her being fingerprinted from your office and that was the reason for your going to the office of Judge Merckle was false, misleading or lacking in candor. That you went to Judge Merckle's office, in truth and in fact, after conferring with Alisa Avery's father, Arthur Avery, Sr.

(B) That you appeared before the division of the Board on June 18, 1993 at which time you were questioned on matters material to the Board's investigation into your character and fitness for admission to The Florida Bar. That at said hearing you gave the following testimony under oath in response to the following questions:

Q. Are you guilty of perjury?

A. I did not commit perjury. I did not commit perjury. I have had a very, very law-abiding life. I've raised my family as

a law-abiding citizen. I was guilty of lying to the investigator for the JQC. I admit that and that was a colossal mistake and I'm not guilty of perjury.

Q. Were you under oath when you testified before the JQC?

A. Yes, sir.

Q. I'm not an attorney. Would you describe to me, please, what is perjury?

A. Perjury is being under oath and giving a false statement.

Q. Well, you told us that you lied to the JQC--

A. Yes, sir.

Q. -- under oath.

A. No, sir.

Q. That's what you told us before, "I lied to the JQC."

A. Yes, sir, investigator, but that's not under oath, sir.

Q. Subsequently under oath you didn't lie to the JQC?

A. I was convicted of lying to the JQC. Your question was did I commit perjury and I did not commit perjury.

That said testimony that you did not commit perjury was false, misleading and lacking in candor in that you were convicted of perjury for having lied to the JQC.

(C) Additionally, that at said investigative hearing you testified that you recanted your false statements to the JQC's investigator before Judge Merckle did. That said testimony was false, misleading or lacking in condor because you did not recant until after discovering Judge Merckle was recanting.

(D) Further, that you told an investigator from the Florida Parole Commission and the Office of Executive Clemency on or about April, 1992 that you were pursuing medical licensure and not a career in law. That said statements were false, misleading or lacking in candor in that you are currently seeking admission to the bar in order to practice and have not pursued medical licensure since July, 1991.

(Findings P 3-6)

Specifications 1, 2 and 3 were basically admitted by the Applicant (TT 5) and specifically 4 was denied. (TT 5-6, 174-180).

The Board found that the Applicant failed to establish by clear and convincing evidence satisfactory rehabilitation (Findings P. 11) and recommended against his admission (Findings P. 13)

ARGUMENT

At the outset of the formal hearing held on July 15, 1994, the Chairman of the Board stated:

> . . . the issues drawn under the pleadings will be decided solely upon the record made in this proceeding.
>
> (Emphasis Supplied)

The Applicant submitted 17 affidavits all attesting to his moral character and fitness to practice law, including one from now deceased James C. Atkins, former Justice of this Court (TT 51) at the formal hearing.

At the formal hearing, Applicant presented the following witnesses:

1) the Applicant (TT 164-230);

2) Frank D. Alvarez, Circuit Judge and Chief Judge of the Thirteenth Judicial Circuit (TT 18-38);

3) Bob Anderson Mitchum, Circuit Judge (TT 38-59);

4) Nelson D. Castellano, Medical Doctor (TT 59-62);

5) Paul B. Johnson, Attorney at Law (TT 63-90);

6) Sam Pendino, Circuit Judge (TT 91-100);

7) Cedric P. Hay, Attorney at Law (TT 100-110);

8) Sylvia Gonzalez, Judicial Assistant in Hillsborough County, Florida (TT 110-119);

9) Rudy Mayoz, Medical Doctor (TT 119-126);

10) Carl Neill, Retired District Administrator for The Florida Department of Health and Rehabilitative Services in Hillsborough, Hardee, Highland and Manatee Counties (TT 127-135);

11) Fred L. Buckine, Former Judge and Attorney at Law (TT 135-150);

12) Charles Martin, Retired Car Parts Businessman (TT 150-153);

13) Bruce Wayne Miller, Chiropractic Physician (TT 153-158);

14) Henry D. Wilson, Attorney at Law and Retired Judge (TT 158-159);

15) James D. Arnold, Former Judge and Attorney at Law (TT 57-59).

These witnesses stated facts attesting to the Applicant's rehabilitation, character and fitness to practice law in Florida.

The Board's only witness was Feliz Ruiz, the Parole Examiner who investigated the Applicant in relation to his request for a pardon (TT 9-17).

The Board, in finding Applicant failed to establish rehabilitation (Findings P. 11) established a policy which resulted in an impossible burden on any applicant convicted of perjury to establish rehabilitation. The Board found the evidence on Specification 4 insufficient and found it not proven but found Specifications 1, 2 and 3 proven and that any one would be adequate reason to recommend against admission.

Condensing the Board's Findings and Conclusions, it becomes apparent that because the Applicant continued to assert his innocence, he was not rehabilitated (Findings P. 1-9).

The Board's position assumes a perfect system of justice. The testimony of Judge Alvarez pointed out that the system was not infallible and recited an instance where, as the prosecutor, he had obtained conviction calling for the death penalty. The primary witness, 15 years later, recanted and fortunately innocence was established before the death penalty was imposed (TT 28-29).

Had that accused acknowledged his guilt straight away, he would have been wrongfully executed. Thus, the position must be that a person even though convicted, has a constitutional right to express his opinion of his innocence under the First Amendment to

the Constitution of the United States and Section 4 of Article I of the Constitution of the State of Florida. This opinion should not be held against [redacted] in these proceedings.

As this Honorable Court can readily see, the result of permitting such a consideration is a catch 22 wherein an applicant must lie to show rehabilitation! Here, the overwhelming evidence is that the Applicant accepted his conviction without malice (TT generally). See Florida Bd. of Bar Examiners RE: L. K. D., 397 So2d 673 (Fla. 1981).

The Board alluded to Applicant's lack of community service and positive actions indicating a useful and constructive place in society (Findings P. 10-11) and concluded that:

> Instead, the applicant has merely shown that he is now living as and doing those things he should have done throughout life, such as complying with the terms of his sentence, working and supporting his family.

Here the Board appears biased; the Applicant testified he voluntarily provided free medical service and emergency room duty over a four year period (TT 207-208, 226-227). The Board discredited this in stating:

> As to the applicant's medical assistance to the poor, no evidence exists, through independent testimony or documentation, that would verify this work as more than required of all medical students as a part of the medical curriculum.
>
> (Emphasis supplied)

(Findings P. 10)

Applicant's testimony was unrebutted, independent and admissible under strict evidentiary rules.

The Board also took issue with Applicant's testimony concerning his injuries which Applicant asserted prevented him from doing more community service. The Board stated:

> Finally, the applicant did not present any evidence showing the type and extent of his injuries . . .
>
> (Emphasis supplied)

Findings p. 10.

Yet, the Applicant, himself a medical doctor, stated:

> I had a serious automobile accident. I had back surgery. I had a disc removed. It's kind of hard to survive and do community service when you are hospitalized and disabled. (TT 204)

The Rules of the Supreme Court of Florida relating to admission to the Bar, Article III, B, Section 3 f, provides in pertinent part:

> The Board is not bound by technical rules of evidence at a formal hearing.

Obviously, the Board did not abide the rule in considering Applicant's unrebutted testimony and apparently rejected, without reason, that testimony.

RELIEF SOUGHT

The Court is requested, upon review, to grant this Petition for Review and order the admission of the applicant to The Florida Bar.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been served by United States mail upon KATHRYN E. RESSEL, ESQUIRE, Deputy Executive Director, Florida Board of Bar Examiners, 1891 Eider Court, Tallahassee, Florida, 32399-1750, this the 28th day of November, A.D., 1994.

MICHAEL L. KINNEY, ESQUIRE
Florida Bar #43085
Post Office Box 18055
Tampa, Florida 33679-8055
(813) 875-5445
(813) 872-8125 (Fax)
Attorney for RICHARD E. LEON

IN THE SUPREME COURT OF FLORIDA

IN RE: APPLICATION OF	)	
RICHARD EDWARD LEON, SR	)	CASE NO: _____
FOR ADMISSION TO	)	BAR NO: 61461
THE FLORIDA BAR	)	

EXHIBIT TO

PETITION FOR REVIEW OF

FINDINGS OF FACT

AND

CONCLUSIONS OF LAW OF

THE FLORIDA BOARD OF
BAR EXAMINERS

MICHAEL L. KINNEY, ESQUIRE
Florida Bar #43085
Post Office Box 18055
Tampa, Florida 33679-8055
(813) 875-5445
(813) 872-8125 (Fax)
Attorney for RICHARD E. LEON

BEFORE THE FLORIDA BOARD OF BAR EXAMINERS

IN RE: Application of)
RICHARD EDWARD LEON, SR)
for Admission to)
The Florida Bar)

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

FINDINGS BACKGROUND

The applicant, Richard Edward Leon, Sr., was born on June 24, 1934 in Tampa, Florida. He completed his secondary education in Tampa, Florida in 1952. The applicant attended the University of Tampa from August 1952 to May 1953 and also June 1955 to February 1960, when a Bachelor of Science degree was awarded him. Applicant Leon entered Stetson Law School in February 1960 and attended until July 1962. He enrolled in Samford University Cumberland Law School in September 1962 and the degree of Juris Doctor was conferred upon him in February 1964. The applicant entered Universidad Mudial Dominican Isabel Azuiar in the Dominican Republic in July 1987 and graduated in August 1990 with a Doctorate in Medicine.

The applicant was initially admitted to The Florida Bar in 1966. The applicant was subsequently disbarred by order of the Supreme Court of Florida issued June 1987.

The applicant sought readmission to The Florida Bar by filing an Application for Admission to The Florida Bar on June 12, 1992 and to the Florida Bar Examination on May 27, 1992. He

successfully completed the July 1992 General Bar Examination and the November 1992 Multi-State Professional Responsibility Exam.

During the course of the usual background investigation conducted by the board, certain items of information that reflected adversely upon the applicant's fitness under the provisions of Article III, Section 2 of the Rules of the Supreme Court of Florida Relating to Admissions to the Bar came to the Board's attention. An extensive investigation of the applicant's activities in question was undertaken.

The applicant was invited to appear before the Board for an investigative hearing and he did so appear on June 18, 1993. Following the investigative hearing, the Board determined that Specifications should be prepared and served upon the applicant and that the matter of his character and fitness be considered at a formal hearing.

The Specifications were served upon the applicant on September 3, 1993. The applicant was advised of his right to a formal hearing on the Specifications and the right to present witnesses and any other evidence that might be pertinent to the

issues. The Board's authority to issue subpoenas was made available to the applicant.

The applicant filed a response to the Specifications on October 12, 1993. By letter dated November 9, 1993, the applicant's attorney requested that his client's hearing be scheduled during the Board's July 1994 meeting.

The formal hearing was convened on July 15, 1994 in Tampa, Florida. The applicant appeared at the hearing and was represented by Michael L. Kinney, Esquire and J. Clint Brown, Esquire.

The Specifications previously served upon the applicant included four charges that read as follows:

Specification 1

> That while serving as a Florida circuit court judge and as a member of The Florida Bar, you were investigated by the Judicial Qualifications Commission relative to your engaging in ex parte communications with Chief Circuit Court Judge Arden Mays Merckle in relation to the criminal case of Alisa D. Avery. That the Judicial Qualifications Commission filed a notice of Formal Charges in five counts against you on April 20, 1983. That a six count Amended Notice of Formal Charges was filed against you on May 13, 1983. That you were subsequently adjudicated guilty by the Commission on four of the counts the circumstances of which are clearly set forth in the Commission's Findings of Fact, Conclusions of Law and Recommendations attached

here as Exhibit "A." The Supreme Court of Florida subsequently upheld the Commission's Findings and ordered your removal from judicial office.

Specification 2

That you were indicted on July 13, 1983 by a Hillsborough County grand jury on two counts of perjury, one count of official misconduct, one count of bribery and one count of unlawful compensation. That a copy of the Indictment is attached hereto as Exhibit "B." That you were subsequently tried by a jury and found guilty on December 14, 1993 on the perjury counts and one count of official misconduct. That the appellate court later set aside your conviction on the count of official misconduct and vacated the sentence as the underlying statute had been held unconstitutionally vague. That you were sentenced to serve five years probation, fined $5,000.00 in court costs and ordered to perform 1,000 hours of community service with HRS. That a copy of the Judgment and Probation Order is Exhibit "C."

Specification 3

That you were admitted to The Florida Bar in 1966. That by order of the Supreme Court of Florida issued on June 11, 1987, you were disbarred from the practice of law based upon your felony convictions and related removal from judicial office. That a copy of the Court's disbarment order is attached as Exhibit "D."

Specification 4

That you continue with a pattern of dishonesty as demonstrated by:

(A) You continue to deny the facts surrounding the alteration of Alisa D. Avery's criminal sentence which ultimately resulted in your conviction on two counts of perjury. Specifically, you relayed to the

Board during the application process and during the investigative hearing that your observance of Ms. Avery being fingerprinted prompted you ex parte conversation with Judge Merckle.

That these statements to the Board are false or lacking in candor in that the JQC and the Grand Jury found your conversation with Ms. Avery's father led to your conferring with Judge Merckle, rather than your viewing her in the fingerprinting process.

That said response that on the day of Alisa Avery's sentencing you saw her being fingerprinted from your office and that was the reason for your going to the office of Judge Merckle was false, misleading or lacking in candor. That you went to Judge Merckle's office, in truth and in fact, after conferring with Alisa Avery's father, Arthur Avery, Sr.

(B) That you appeared before the division of the Board on June 18, 1993 at which time you were questioned on matters material to the Board's investigation into your character and fitness for admission to The Florida Bar. That at said hearing you gave the following testimony under oath in response to the following questions:

Q. Are you guilty of perjury?

A. I did not commit perjury. I did not commit perjury. I have had a very, very law-abiding life. I've raised my family as a law-abiding citizen. I was guilty of lying to the investigator for the JQC. I admit that and that was a colossal mistake and I'm not guilty of perjury.

Q. Were you under oath when you testified before the JQC?

A. Yes, sir.

Q. I'm not an attorney. Would you describe to me, please, what is perjury?

A. Perjury is being under oath and giving a false statement.

Q. Well, you told us that you lied to the JQC--

A. Yes, sir.

Q. -- under oath.

A. No, sir.

Q. That's what you told us before, "I lied to the JQC."

A. Yes, sir, investigator, but that's not under oath, sir.

Q. Subsequently under oath you didn't lie to the JQC?

A. I was convicted of lying to the JQC. Your question was did I commit perjury and I did not commit perjury.

That said testimony that you did not commit perjury was false, misleading and lacking in candor in that you were convicted of perjury for having lied to the JQC.

(C) Additionally, that at said investigative hearing you testified that you recanted your false statements to the JQC's investigator before Judge Merckle did. That said testimony was false, misleading or lacking in condor because you did not recant until after discovering Judge Merckle was recanting.

(D) Further, that you told an investigator from the Florida Parole Commission and the Office of Executive

Clemency on or about April, 1992 that you were pursuing medical licensure and not a career in law. That said statements were false, misleading or lacking in candor in that you are currently seeking admission to the bar in order to practice and have not pursued medical licensure since July, 1991.

FINDINGS OF FACT

Specification 1 addresses the applicant's removal from judicial office following the Supreme Court of Florida's upholding of the Judicial Qualification Commission's ("JQC") recommendation that he be removed. Specifically, while serving as a Florida circuit court judge and as a member of The Florida Bar, the applicant was adjudicated guilty by the JQC on the following four counts:

(1) Improperly participating in ex parte communications with Circuit Judge Arden Mays Merckle about the criminal cases of Alisa Dean Avery; improperly securing the alteration of a sentence imposed on the defendant Avery; improperly engaging in repeated ex parte communications with the State Attorney's Office about the disposition of the Avery case; and improperly fraternizing with the defendant Avery's father while his daughter's case was pending before the Criminal Justice Division of the Circuit Court for the Thirteenth Judicial Circuit on which the applicant sat.

(2) Engaging in the sale of land to the defendant Avery's father when the defendant's cases were pending before the court on which he sat.

(3) Conspiring with Judge Merckle to deny their ex parte communications, and then implementing this scheme by denying the same in response to inquiries by the press and by a JQC investigator.

(4) Falsely stating on two occasions to a JQC investigator that the applicant had not had contact with the defendant Avery's father the day of her sentencing; falsely stating under oath that the statements given to the JQC investigator were true; falsely stating under oath that his ex parte communications with Judge Merckle the day of the sentencing were the result of the applicant having seen the defendant being fingerprinted, when actually they resulted from his contact with the defendant's father.

The JQC's findings, conclusions and recommendation of removal were reviewed and upheld by the Supreme Court.

Specification 2 addresses the applicant's criminal conviction on two counts of perjury and on one count of official misconduct.

The perjury convictions were subsequently upheld on appeal in Leon v. State of Florida, 474 So. 2d 832 (Fla. 2d DCA 1985).

The applicant filed a sworn Amended Answer and Affirmative Defenses to Specifications ("Answer") executed by him on October 12, 1993. In his Answer and in his sworn testimony, the applicant admitted the first two Specifications. Accordingly, the Board finds that Specifications 1 and 2 have been proven. The language of Specifications 1 and 2 reproduced above under the Findings Background is adopted by the Board as its specific findings of fact.

As to proven Specification 1, the Board finds that it is, standing alone, disqualifying for admission to the Florida Bar. As to proven Specification 2, the board finds that it is, standing alone, disqualifying for admission to the Florida Bar.

Specification 3 addresses the applicant's disbarment in Florida in 1987 based on his felony convictions (see Specification 2) and related removal from judicial office (see Specification 1). In his Answer and during the formal hearing, the applicant admitted that his disbarment was based on his felony convictions, but denied that it was based on his removal from judicial office. The Supreme Court, however, after noting the applicant's removal from office

and subsequent convictions for perjury, disbarred the applicant because of the "nature of [his] actions," demonstrating that the Court considered the circumstances underlying both his felony convictions and his removal from office. The Florida Bar v. Leon, 510 So. 2d 873 (Fla. 1987). The Board finds that the facts giving rise to the disqualification from office and the felony convictions are sufficiently indistinguishable, that the applicant was on notice of the substance of the allegations and that they are proven. The Board further finds that this disbarment and its underlying circumstances standing alone disqualify him for admission to The Florida Bar.

Specification 4 addressed the applicant's continued dishonesty about his removal from judicial office and his felony convictions. In his Answer and during the formal hearing, the applicant denied the allegations in Specification 4 and in fact essentially denied the factual underpinnings of Specifications 1, 2, and 3. Actual evidence of the matters giving rise to the removal, criminal convictions and disbarment was not presented at the formal hearing. Therefore, based on the record before it, the Board finds that the

evidence is insufficient to support the allegations of Specification 4 and it is not proven.

During the formal hearing, the applicant urged the Board to conclude that he had been rehabilitated as provided by applicable rules. He called numerous witnesses who testified to his good character and moral standing; his professional ability; his lack of malice concerning his removal, disbarment and convictions; and his desire to conduct himself in exemplary fashion in the future. The applicant offered proof of his 1000 hours of community service, followed by three or four months of paid additional work at the Department of Health and Rehabilitative Services ("HRS"); his own testimony that he proved medical assistance to the poor while he attended medical school; and his work as a paralegal as evidence of his rehabilitation. The applicant further claimed that injuries and taking care of his family, including putting his children through college, have kept him from doing other community service. The applicant has failed to offer clear and convincing evidence of his rehabilitation as required by law.

The applicant's completion of 1000 hours of community service at HRS was required as part of his criminal sentence.

Although this would constitute satisfaction of "strict compliance with the specific conditions of any . . . judicial . . . order" (see Fla. Bar Admiss. R., Art. III, §4.e.(1)), no evidence exists that he contributed a single additional hour of voluntary community service to the HRS. Simply stated, had the applicant not performed the 1,000 hours of work at HRS he would have exposed himself to a probation violation and potential prison sentence.

The applicant's subsequent work at HRS and as a paralegal was paid, not voluntary. As to the applicant's medical assistance to the poor, no evidence exists, through independent testimony or documentation, that would verify this work was more than that required of all medical students as part of the medical school curriculum. Finally, the applicant did not present any evidence showing the type and extent of his injuries that allegedly prevented him from performing community service. The length of time the applicant has had to perform affirmative steps showing rehabilitation is significant.

Without such evidence, the applicant has not presented sufficient positive actions indicating that he has undertaken a useful and constructive place in society or that he has provided service to

his community. Such community service is an implied obligation of members of the bar and, thus, those seeking admission to the bar. See **Fla. Bar Admiss. R., Art. III, §4.e(7).** Such positive actions and community service are particularly imperative in the applicant's case given the egregious nature of his misconduct and the position of highest trust that he betrayed as a judge and as a member of The Florida Bar. Instead, the applicant has merely shown that he is now living as and doing those things he should have done throughout life, such as complying with the terms of his sentence, working and supporting his family. See Fla. Bar Admiss. R., Art. III, §4.e(7).

Upon consideration of the applicant's Answer, the exhibits introduced at the formal hearing, and the formal hearing testimony, the Board finds that Specifications 1, 2 and 3 are conclusively proven. The Board further finds that the applicant's evidence fails to mitigate the seriousness of any of the proven allegations. Rarely is this board confronted with conclusive evidence of moral turpitude rising to the level of egregiousness as exists on this record, and the level of proof reasonably demanded to establish rehabilitation is lacking.

The Board finds that the applicant's formal hearing presentation completely failed to establish satisfactory rehabilitation by clear and convincing evidence as required by **Fla. Bar Admiss. R., Art. III, §4.e(7).**

CONCLUSIONS OF LAW

Based upon the findings set forth above, the Board concludes that the proven allegations of Specifications 1, 2 and 3 are individually and collectively disqualifying for admission to the Florida Bar. Such proven allegations establish that the applicant, while a circuit judge and a member of The Florida Bar, engaged in egregious misconduct for which the applicant was found, beyond a reasonable doubt, guilty of perjury. This conviction for a crime of the highest moral turpitude was reviewed and upheld on appeal. Leon v. State of Florida, 474 So. 2d 832 (Fla. 2d DCA 1985).

Given those circumstances, the applicant appeared before the Board with the difficult burden of demonstrating his character and fitness for returning to the Bar. In reaching its conclusion as to the applicant's current character and fitness to return to the practice of

law, the Board is guided by the following factors contained in Fla. Bar Admiss. R., Art. III, §2.c:

(1) the applicant's age at the time of the conduct;
(2) the reliability of the information concerning the conduct;
(3) the reliability of the information concerning the conduct;
(4) the seriousness of the conduct;
(5) the factors underlying the conduct;
(6) the cumulative effect of the conduct or information;
(7) the evidence of rehabilitation;
(8) the applicant's positive social contributions since the conduct;
(9) the applicant's candor in the admissions process;
(10) the materiality of any omissions or misrepresentations.

In applying the above-listed factors to the applicant's case, the Board observes that the applicant was 48 years of age, had been an attorney for over 15 years, and a judge for at least four years at the time of his misconduct. Despite his age, experience, and the high standards expected of one holding the position of Circuit Judge, the applicant abused his position through his misconduct outlined above in the Findings of Fact. Moreover, he then compounded this misconduct through false statements and perjury. The seriousness of such behavior by one who has taken an oath to uphold the law is uncontested.

Given the seriousness of the applicant's misconduct, he was required to produce clear and convincing evidence of his rehabilitation. As noted above in the Findings of Fact, although the applicant claims rehabilitation, he failed to offer satisfactory evidence of it. The especially outrageous nature of the applicant's crime and the position of absolute trust that the applicant betrayed as a judge and as a member of The Florida Bar demand proof of such rehabilitation. The Board concludes that the applicant totally failed in this respect.

It is, therefore, the conclusion of the Board that the evidence before it as set forth in the foregoing Findings clearly and unequivocally establishes that the applicant fails to meet the standards of conduct and fitness required under the provisions of Fla. Bar Admiss. R., Art. III, §2.

RECOMMENDATION

WHEREFORE, the Board recommends that Richard Edward Leon, Sr. not be admitted to The Florida Bar under the provisions of Article VII of the Rules of the Supreme court of Florida Relating to Admissions to the Bar.

DATED this 30th day of September, 1994.

Kathryn E. Ressel
Deputy Executive Director
Florida Board of Bar Examiners

Original: Michael L. Kinney, Attorney for Applicant

CERTIFIED MAIL NO.: Z 751 816 477
RETURN RECEIPT REQUESTED

Copy: Henry M. Coxe, III, Board's Attorney

DOCUMENT 5

Response in Opposition to

Corrected Petition for Review

IN THE SUPREME COURT OF FLORIDA

FLORIDA BOARD OF BAR EXAMINERS

RE: R.E.L.) CASE NO: 84,786
)
) CONFIDENTIAL

RESPONSE IN OPPOSITION TO CORRECTED PETITION FOR REVIEW

Submitted by:

THE FLORIDA BOARD OF BAR EXAMINERS
L. KINDER CANNON III, CHAIRMAN

Kathryn E. Ressell
Executive Director

Henry M. Coxe, III, Esquire
Law Offices of Henry M. Coxe, III
424 East Monroe Street
Jacksonville, FL 32202
Florida Bar # 0155193

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RESPONSE TO PETITION FOR REVIEW

The Florida Board of Bar Examiners, by and through its undersigned counsel, files its Response to the Corrected Petition for Review filed on behalf of the applicant Richard Edward Leon, Sr. ("Leon").

PRELIMINARY STATEMENT

The Board will use the following citations:

"BE" references the Board's Exhibits offered into evidence at the applicant's July 15, 1994 formal hearing.

"FF" references the Board's Findings of Fact and Conclusions of Law dated September 30, 1994.

"FHT" references the transcript of the applicant's July 15, 1994 formal hearing.

"SP" references the Specifications served on the applicant.

JURISDICTION

The Board acknowledges that the Court has jurisdiction of this matter pursuant to Article III, Section 4.b. of the Rules of the Supreme Court of Florida Relating to Admissions to the Bar.

STATEMENT OF THE CASE

The applicant filed his application for Admissions to the Florida Bar on June 12, 1992. He successfully completed the July 1992 General Bar Examination and the November 1992 Multi-State Professional Responsibility Exam.

The applicant was invited to appear before the Board for an investigative hearing, and he did so, on June 18, 1993. Following this hearing, the applicant was served with Specifications on September 3, 1993 so that the matter of his character and fitness could be considered at a formal hearing. The applicant filed a response to the Specifications on October 12, 1993 and a formal hearing was convened on July 15, 1994 in Tampa, Florida.

On September 30, 1994, the Board submitted its Findings of Fact and Conclusions of Law recommending that the applicant be denied admission to the Florida Bar.

STATEMENT OF THE FACTS

The Board accepts the Statement of Facts as presented by Leon with the following additions and clarifications.

While serving as a Florida circuit court judge and as a member of The Florida Bar, Leon was adjudicated guilty by the Judicial Qualifications Commission ("JQC") on the following four counts:

> (1) Improperly participating in ex parte communications with Circuit Judge Arden Mays Merckle about the criminal cases of Alisa Dean Avery; improperly securing the alteration of a sentence imposed on the

> defendant Avery; improperly engaging in repeated ex parte communications with the State Attorney's Office about the disposition of the Avery case; and improperly fraternizing with the defendant Avery's father while his daughter's case was pending before the Criminal Justice Division of the Circuit Court for the Thirteenth Judicial Circuit on which the applicant sat.
>
> (2) Engaging in the sale of land to the defendant Avery's father when the defendant's cases were pending before the court on which he sat.
>
> (3) Conspiring with Judge Merckle to deny their ex parte communications, and then implementing this scheme by denying the same in response to inquiries by the press and by a JQC investigator.
>
> (4) Falsely stating on two occasions to a JQC investigator that the applicant had not had contact with the defendant Avery's father the day of her sentencing; falsely stating under oath that the statements given to the JQC investigator were true; falsely stating under oath that his ex parte communications with Judge Merckle the day of the sentencing were the result of the applicant having seen the defendant being fingerprinted, when actually they resulted from his contact with the defendant's father.

(SP Exhibit "A"). The JQC's findings, conclusions and recommendation of removal were reviewed and upheld by this Court. (BE No. 7).

Leon was subsequently indicted on two counts of perjury, one count of official misconduct, one count of bribery and one count of unlawful compensation. (SPE Exhibit "B"). He was convicted

of the first three counts with the official misconduct conviction being reversed on appeal.

During the formal hearing, Leon urged the Board to conclude that the had been rehabilitated as provided by applicable rules. As evidence of his rehabilitation he offered the following:

(1) His 1000 hours of community services at the Department of Health and Rehabilitative Services ("HRS"). (FHT at 173).

(2) His three or four months of additional work at HRS. (FHT at 174).

(3) His work as a paralegal. (FHT at 181).

(4)His uncorroborated testimony that he provided emergency room service, clinic service, and medical assistance to the indigent while he attended medical school. (FHT at 207-208).

(5) Raising his family. (FHT at 239).

The applicant further claimed, without independent verification, that injuries and taking care of his family, including putting his children through college, have kept him from doing other community service. (FHT at 181 and 204).

The 1,000 hours of community service performed at HRS was not work voluntarily performed, but was in fact a condition of the applicant's felony probation. As for additional work performed for HRS beyond that required by his sentence, the applicant was compensation in full for the work. Consequently, there existed no documented evidence at the formal hearing that the applicant voluntarily performed any community service during the entire ten year period since his disbarment.

The Board recommended against Leon's admission to the Bar and also noted that "[r]arely is the Board confronted with conclusive evidence of moral turpitude rising to the level of egregiousness as exists in this record, and the level of proof reasonably demanded to establish rehabilitation is lacking." (FF at 11).

SUMMARY OF THE ARGUMENT

It is undisputed that Leon, while a circuit court judge and a member of the Florida Bar, was found guilty of, among other misconduct, perjury - a crime of the highest moral turpitude. Given this conviction for such an egregious crime, which was an absolute betrayal of his position as a judge and an attorney, Leon

had the heavy burden of showing rehabilitation. Given the opportunity to present evidence of such rehabilitation, Leon failed to do so.

ARGUMENT

It is undisputed that the applicant, as a judge and member of the Florida Bar, was (1) found guilty by the Judicial Qualifications Committee ("JQC") of, among other things, lying under oath, (2) recommended for removal by the JQC and subsequently removed from office by this Honorable Court, (3) tried and convicted of two counts of perjury, and, finally, (4) disbarred by this Honorable Court. Each of these items was addressed in Specifications 1 through 3 and was admitted by the applicant in his Amended Answer and Affirmative Defenses to Specifications.

Given this egregious and disqualifying misconduct, the applicant appeared before the Board at his formal hearing with the heavy burden of establishing his rehabilitation. As noted by one court, the showing of rehabilitation is not an easy burden.

> A fundamental rule in bar admission cases is that evidence of reform and rehabilitation is relevant to the assessment of an applicant's moral character. Rehabili-

> tation is pertinent because the Court is interested in an applicant's present fitness to practice law. Where evidence convincingly demonstrates reform and rehabilitation, it can overcome the adverse inference of unfitness arising from past misconduct and, if persuasive, present fitness may be found.
>
> An applicant's attitude and behavior subsequent to disqualifying misconduct must demonstrate a reformation of character so convincingly that it is proper to allow admission to a profession whose members must stand free from all suspicion. The more serious the misconduct, the greater the showing of rehabilitation that will be required. In certain instances, evidence of a positive kind including affirmative acts demonstrating personal reform and improvement will be required in order to establish the requisite degree of rehabilitation. However, it must be recognized that in the case of extremely damning past misconduct, a showing of rehabilitation may be virtually impossible to make. In all cases, the need to ensure the legitimacy of the judicial process remains paramount.

Application of Matthews, 462 A.2d 165, 176 (N.J. 1983) (citations omitted).

This Court adheres to this same difficult burden and requires that rehabilitation be established by clear and convincing evidence including, but not limited to, the following elements:

> (1) Strict compliance with the specific conditions of any . . . judicial . . . order;
>
> (2) Unimpeachable character and moral standing in the community;
>
> (3) Good reputation for professional ability;

> (4) Lack of malice and ill feeling toward those who by duty were compelled to bring about the disciplinary, judicial or administrative proceeding;
>
> (5) Personal assurances, supported by corroborating evidence, of a desire and intention to conduct one's self in an exemplary fashion in the future;
>
> (7) Positive actions showing rehabilitation by such things as a person's occupation, religion, community or civic service. **Merely showing that an individual is now living as and doing those things he or she should have done throughout life, although necessary to prove rehabilitation, does not prove that the individual has undertaken a useful and constructive place in society. The requirement of positive action is appropriate for applicants for admission to the bar because service to one's community is an implied obligation of members of the bar.**

Fla. Bar Admiss. R, Art. III, §4.e. (emphasis supplied).

Moreover, in making its determination, the board is to weigh the nature and seriousness of the offense against the evidence of rehabilitation. Florida Bar Examiners re D.M.J., 586 So.2d 1049, 1050 (Fla. 1991).[1]

In the case at hand, Leon is guilty of such acts as perjury, conspiring to lie, lying to a JQC investigator, improper alteration of a sentence, improper ex parte communications, and improper fraternization with the defendant's father. These acts, which ultimately led to his removal from judicial office and disbarment,

clearly rise to the level of moral turpitude and constitute an absolute betrayal of his position as a judge and lawyer. Thus, Leon had the burden of showing evidence of rehabilitation that could offset such egregious misconduct. That is, he needed to provide evidence of positive actions that would show he was undertaken a useful and constructive place in society. As discussed below, there was a dearth of such positive actions.

Much of what Leon claimed as specific evidence of rehabilitation - raising a family and working as a paralegal or a paid HRS employee -0 is "merely showing" that he "is now living as and doing those things that he . .. should have done throughout life." Fla. Bar Admiss. R, Art. III, §4.e.

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[1] The applicant's argument that his rehabilitation was contingent upon his acknowledgement of guilt is without merit. A review of the Findings of Fact reveals that no such acknowledgement was required by the Board or entered into its determination of rehabilitation. Moreover, such a requirement would be inconsistent with the Board's finding that Specification 4, which alleged the applicant's continued dishonesty about his removal from judicial office and his felony convictions, was unproven. (FF at 9).

Similarly, his 1000 hours of community service was a part of his criminal sentence that he had to do or else be exposed to a probation violation and possible prison sentence. Therefore, none of these claims can constitute positive actions demonstrating that Leon has undertaken a useful and constructive place in society.

The only action that even begins to address the level of positive action contemplated by the rule at issue is Leon's alleged voluntary services while in medical school. Leon, however, failed to offer any independent testimony or documentation to support this claim. Similarly, Leon failed to offer any evidence to support his claim that injuries prevented him from doing more community service. Rehabilitation is not aspirational; it requires proof.

The applicant did offer the testimony, affidavits, and letters of several character witnesses who discussed such matters as the applicant's good reputation in the community, his competency as a lawyer, his lack of malice, and his desire to conduct himself in an exemplary fashion in the future. These attributes are, however, "things" that Leon "should have done throughout life" that, "although necessary to prove rehabilitation," do not show that Leon has undertaken a useful and constructive place in society.

Furthermore, none of the witnesses offered any evidence supporting the applicant's claims about his medical service or the injuries that prevented him from providing more positive actions. In fact, when one of the witnesses, Dr. Rudy Mayoz (the applicant's son-in-law), was questioned as to why the applicant went to medical school, helping others was not one of the reasons given. Instead he answered, "primarily because there wasn't very much else that [the applicant] could do as a professional." (FHT at 124). Moreover, of the three medical professionals who testified on the applicant's behalf, only one discussed the applicant's claimed injuries and that was merely to say that the applicant "... had a little problems (sic) with his low back." (FHT at 157, emphasis supplied).

The Board has the primary duty to assure the protection of the public and safeguard the justice system. Fla. Bar Admiss. R., Art. III, B., §2.b. The egregious nature of the applicant's crimes of moral turpitude and the position of highest trust that he betrayed as a judge and as a member of the Florida Bar go straight to the heart of this justice system. Given the opportunity to convince the Board of his rehabilitation - that he should be allowed into a profession

whose members must stand free from all suspicion - Leon simply failed.

The applicant is required to present clear and convincing proof of rehabilitation upon petition for readmission after disbarment for matters of moral turpitude. He has had ten (10) years in which to establish that he has done more than what society demands of all persons, especially those licensed to practice law. Nevertheless the applicant offered no credible evidence that he has ever taken affirmative steps beyond the norm from which the board could conclude that he is either rehabilitated or now appreciates the demands encompassed by the concept of rehabilitation.

In issues of this nature involving the resolution of a factual dispute, the Board submits that the decision of the Supreme Court of Delaware in In re Green, 464 A.2d 881 (Del. 1983) is particularly applicable:

> The Board is an important arm of the court, composed of experienced and able members of the Delaware Bar. Provided their findings are supported by substantial evidence and are the product of any orderly and logical deductive process, we accept them. Where, as here, the determination of facts turns on a questions of credibility and the acceptance or rejection of "live" testimony before the board, this Court, in the exercise of judicial restraint, must affirm.

Id. at 886 (citations omitted). "The referee is the person most well-equipped to judge the character and demeanor of the lawyer being disciplined. The Fla. Bar v. Fine, 607 So.2d 416 (Fla, 1992). The referee was clearly convinced that Rood's testimony was not credible, and we are not at liberty to substitute our judgment for that of the finder of fact." The Florida Bar v. Rood 622 So.2d at 977-78 (Fla. 1993). The Board's findings as to the applicants rehabilitation are the product of an orderly and logical deductive process and should, therefore, be affirmed.

CONCLUSION

It is evident from the Board's findings, conclusions and recommendation that the Board thoroughly and fairly evaluated the record before it including the applicant's evidence of rehabilitation. The Board properly found that such evidence was insufficient when weighed against the nature and seriousness of the applicant's past misconduct.

WHEREFORE, the board respectfully submits that the applicant has failed to establish his rehabilitation by clear and convincing evidence. The Board's findings should be approved by

the Court and the Board's recommendation that the applicant not be admitted to the Florida Bar at this time should be affirmed.

DATED this 4th day of January, 1995.

Respectfully submitted,

FLORIDA BOARD OF BAR EXAMINERS
L. KINDER CANNON III, CHAIRMAN

Kathryn E. Ressell
Executive Director

By: /s/ Henry M. Coxe, III
Henry M. Coxe, III Esquire
Law Offices of Henry M. Coxe, III
424 East Monroe Street
Jacksonville, Florida 32202
(904) 356-2389
Florida Bar #0155193

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response has been served by U.S. Mail this 4th day of January, 1995 to Michael L. Kinney, Esquire, Kinney, Fernandez & Boire, P.A., P.O. Box 18055, Tampa, Florida 33679-8055.

/s/ Henry M. Coxe, III
Attorney

DOCUMENT 6

Motion for Rehearing

IN THE SUPREME COURT OF FLORIDA

IN RE: THE APPLICATION OF	)	CASE NO: 84,786
	)	
RICHARD E. LEON,	)	CONFIDENTIAL

MOTION FOR REHEARING

This Motion for Rehearing is submitted pursuant to Rule 9.330, Fla.R.App.P., and challenges, in a constitutional context, the Findings of Fact and Conclusions of Law (Findings and Conclusion) of the Florida Board of Bar Examiners (The Board).

In Baird v. Arizona, 401 U.S. 1, 27 L.Ed 2d 639, 91 S.Ct. 702 (1971), the United States Supreme Court announced, as a general proposition, that:

> The practice of law is not a matter of grace, but of right for one who is qualified by his learning and his moral character. See Schware v Board of Bar Examiners, supra, and Ex parte Garland, 4 Wall 333, 18 L.Ed 366 (1867).

It s urged for this Court's consideration that The Board lapsed into a subjectively based reasoning process which ignored the clear and convincing evidence of rehabilitation and moral fitness which,

under a proper constitutionally objective analysis, could only have resulted in a favorable recommendation.

As an example, much was made of the failure of the Applicant to prove volunteer community service. On page 10 of the Findings and Conclusions is the following:

> As to the Applicant's medical assistance to the poor, no evidence exists, through independent testimony or documentation, that would verify this work was more than that required of all medical students as part of the medical school curriculum.

Simply stated, The Board rejected the straight forward, sworn, first hand testimony of the Applicant, subject to cross-examination, which was neither inherently improbable nor in any way impeached despite the opportunity presented to The Board's skilled attorneys. The only explanation of the rejection is that The Board considered the Applicant dishonest. It follows that Specification 4, brought by the Board, asserting continuing dishonest, still lurked in the mind of The Board. The Fact that the continuing dishonest charged with dismissed (apparently at the election of The Board since proof of the continuing denial of guilt was susceptible of easy proof) is further evidence of a subjective approach.

Such subjective reasoning violated the Applicant's Constitutional right under the Fourteenth Amendment to the Constitution of the United States to be treated equally with other applicants and lawyers and to have a fair tribunal.

To merely hear and not apply proofs validly before it, resulted in a denial of due process by The Board. The United States Supreme Court in Washington ex rel Oregon R. & N. Co. v. Fairchild, 23 U.S. 510, 56 L.Ed. 863, 32 S.Ct. 535 (1912) set out the requirements of a fair tribunal. This case involved a ruling of a state railroad commission resulting from the asserted hearing held in violation of due process.

The Court, in reversing, stated:

> The carrier must have the right to secure and present evidence material to the issue under investigation. It must be given the opportunity by proof and argument to controvert the claim asserted against it before a tribunal bound not only to listen, but to give legal effect to what has been established.
>
> (Emphasis supplied)

This principle was violated by The Board.

In the Petition for Review (page 10), we alluded to the proverbial catch 22 with which Applicant was faced on now note

in passing that this Court used the same term in over-turning the Board's recommendation of non-admission in the case of Florida Board of Bar Examiners re M.C.A., 650 So.2d 34 (Fla. 1995).

Perhaps anticipating this Court's recognition of the catch 22 situation, The Board elected not to pursue Specification 4 but rejected perfectly competent testimony on legally untenable grounds that the testimony of Applicant was not independent and thus not credible. Only a presumption of dishonesty could produce that result.

Such an approach as a matter of principle has been condemned. In Staub v. Baxley, 355 U.S. 313, 2 L.Ed. 2d 302 78 S.Ct. 277 (1958), Supreme Court review was sought from a conviction and Appellate affirmance thereof in the State Court's of Georgia.

The conviction was for an ordinance violation which appellant claimed violated First Amendment rights but her claim was rejected. On appeal to the United States Supreme Court, the City of Baxley argued that there was no Federal jurisdiction to review the case because the affirmance of the conviction rested upon adequate nonFederal grounds.

The Supreme Court rejected that argument stating:

> It therefor is within our provence to inquire not only whether the right was denied in express terms, but also whether it was denied in substance and effect, as by putting forward non-Federal grounds of decision that were without any fair or substantial support . . . (for) if non-Federal grounds, plainly untenable, may be thus put forward successfully, our power to review easily may be avoided.
>
> (Emphasis supplied)

The Board's reasoning and foundation for its conclusion is untenable.

It further appears, in the face of a full pardon, The Board unwittingly undertook to continue to punish Applicant for past, but fully atoned and pardoned misdeeds in violation of the dictates, or at least the spirit, of the Fifth Amendment applied to the States through the Fourteenth Amendment.

Lastly, we ask the Court to judicially notice that U.S. Representative Alcee Hastings if presently practicing law in this state after being removed from the Federal bench under circumstances similar to Applicants, and that recently this Court suspended U. S. Representative Larry Smith for three years from the practice of law based on convictions of income tax evasions and making false

statements to a Federal elections committee See: The Florida Bar v. Smith, 650 So.2d 980 (Fla. 1995).

Viewed in an objectively reasonable perspective, the evidence is clear and convincing that the Applicant is rehabilitated and morally qualified to be admitted to the practice of law in the State of Florida.

Respectfully submitted,

MICHAEL L. KINNEY, ESQUIRE
Florida Bar #43085
Post Office Box 18055
Tampa, Florida 33679-8055
(813) 875-5445
(813) 872-8125 (Fax)
Attorney for Applicant

DOCUMENT 7

Excerpts from Transcript

Testimony of Honorable Frank D. Alvarez
Pages 18-38

MR. MILLER: Do you want to call your first witness?

MR. MILLER: Good morning, sir. Will you be sworn in?

HONORABLE FRANK D. ALVAREZ,

the witness herein, being first duly sworn on oath, was questioned and testified as follows:

MR. MILLER: State you name for the record, please.

THE WITNESS: Frank Dennis Alvarez, A-l-v-a-r-e-z.

MR. MILLER: Mr. Brown?

MR. BROWN: Mr. Kinney is going to conduct the examination.

BY MR. KINNEY:

Q. What is your profession.

A. I'm a lawyer by profession. My employment occupation now is a circuit judge in the 13th Judicial Circuit.

Q. And how long have you been a circuit judge?

A. Have been a circuit judge since January 7th, 1985.

Q. And are you the chief --

A. I presently serve as the Chief Judge for the 13th Judicial Circuit.

Q. And how long have you held that position?

A. Since August 1, 1988.

Q. Do you know the Applicant in this case, Richard Leon?

A. Yes, I do.

Q. And how long have you known Mr. Leon?

A. I've known Dickie I would say 15, 20 years.

Q. And in what capacity have you known him, socially or businesswise?

A. I met Dick socially years ago. I got to know him better when I became a county judge back in 1981.

Q. Do you have an opinion as to Mr. Leon's reputation in the community obtained in Hillsborough County for honesty, truthfulness, ethics and good character?

A. Yes, I do.

Q. And what is that opinion?

A. That opinion is good.

Q. In your opinion, has Mr. Leon accepted the legal consequences of his conviction?

A. The times I've talked to Dickie since all the problem, he accepted the jury verdict. I think Dickie from day one has always

maintained his innocence. He felt strongly about that. But he accepted what had happened to him. And accepted the punishment. And completed it, and completed it well, as I understand.

Q. Would you recommend Mr. Leon for admission to the Florida Bar?

A. I would.

Q. Is there anything you would like to add with regard to his character or ethics?

A. Well, strangely when all this was going on as to the basis of my testimony reference to his character being good, all the people you talked to, whether it was lawyers or people in the community or other judges, everybody was quite shocked as to the charges. A lot of the people felt like Dick did with reference to the outcome of the trial. I've spoken to Dick very very little, you know, since his conviction. But the last time, I think the first time I saw him he appeared as a, in a case in front of me as a guardian, I believe, for this mother, who was being adjudicated incapacitated. And that's the first time I think I had seen Dick since he had completed medical school. But everything that he was asked to do,

his terms and conditions of probation, he completed and completed them well. I think that Dick would serve as a good lawyer.

MR. KINNEY: Thank you, Judge.

MR. MILLER: Mr. Coxe?

BY MR. COXE:

Q. Judge, I am Hank Coxe from Jacksonville. Am I correct that you've not discussed with Mr. Leon the facts surrounding the case in 1982?

A. I didn't testify at Dick's trial against Arden Merckle, which is entirely two sets of facts. But, you know, there were discussions back then that probably I had with Dick with reference to to the case and so forth. But, then after the conviction I would run into Dick, and we would talk about what he was doing. I understand when he went to medical school, and then he came back, I had seen him. Those are general type conversations. But basically a detailed conversation with him in reference to his problems, no. And even more, Mr. Coxe, when he advised me some time back if I would be a witness that this hearing, basically I didn't want to talk to him about anything that I may have to

answer. So that's basically the extent of the conversation I've had with Dick concerning this.

Q. Can I ask you in what capacity you testified at Mr. Merckle's trial, what issue?

A. Just basically as to the talking about the assignment or reassignment of cases, the duties of a chief judge. The chief judge I believe had the authority to reassign cases to himself under the Administrative Code, the Rules of Judicial Administration.

Q. You mentioned, you characterized, Your Honor, a number of people were shocked as I understand, shocked at the result that he was found guilty, is that fair to say?

A. That was the general feeling back then, Mr. Coxe, to be totally honest with you, of the majority of the people in the courthouse.

Q. You have handled a fair number of cases over the years?

A. Yes.

Q. And you have handled a fair amount of cases that have had media attention?

A. Very much so.

Q. Have you experienced a number of cases where the general understanding of the media account of what's going on is not actually what you're seeing there in front of the bench?

A. That's correct. Very correct.

Q. Would you agree that perjury is as egregious a crime of moral turpitude as there can be?

A. Yes, sir.

MR. COXE: I don't have anything else, Mr. Chairman.

BY MR. KINNEY:

Q. At the time of these proceedings, what was the position of Judge Merckle at that time?

A. At the time all this was going on Judge Merckle was the chief judge of the circuit.

Q. Was he also at that time a member of the JQC?

A. I don't know if he was a member at that time or just getting off. But I don't know during that time. He had been a member of the JQC. I'm not sure if he was off yet or his term was beginning or finishing. But I know he was a member of the JQC during that time period.

MR. KINNEY: Thank you.

MR. MILLER: Ms. Schneider?

BY MS. SCHNEIDER:

Q. I have one question, Your Honor. As a public member, can you explain to me how an individual could be convicted of the crime of perjury and not be guilty of it?

A. Well, in our system, just because you're convicted, all right, does not necessarily mean that you have committed the crime. It's based on the evidence that's admitted. As I understand the facts in this case, the perjury count that he was convicted of were statements that he made to Tom McDonald. And at some point later there was an attempt to explain or recant or whatever. I think once the statements were made to McDonald, I think Dick Leon felt one way, and the facts that Tom McDonald had been told or knew were different. And he went to trial and was convicted of the perjury charges dealing with statements made to the JQC investigator. But, you know --

Q. Excuse me. But that was not hearsay?

A. No, because I think, as I understand it, that's what he was convicted of, the perjury count, was statements made to the JQC investigator. And at that point in time Tom McDonald, since

he was going to be a witness, recused himself from the JQC proceedings. But during that time we would talk. I knew Mr. Mitcham, who was his lawyer. I would hear things. And again, this is an administrative hearing, but they were given polygraph examinations and so forth, which as I understand it at the time were positive for Mr. Leon. But everything else that he had been tried on, basically I believe he was acquitted. And the one case was thrown out by the 2nd District Court of Appeals.

I just thought that overall, Mr. Coxe, I think because we're going back to '82, '83, the way things were occurring in Hillsborough Count at the time, you had two judges who had been charged. You had three commissioners who had been indicted. I mean, the media was frenzied. They reminded me like the situation that's going on in L. A. I mean, every day, every day, every day had something going on. And I think just by reading, there was a lot of stuff that came out that was not, you know, was just not happening. And I think all that probably might have determined as to whether any and all charges would have been filed, where maybe one or two charges may have been filed. But with all the media hype and all the, quote, corruption that was

going on in Hillsborough County at the time, the appointed state attorney at that time just decided to file as many possible charges as possible. It was an electric time in Hillsborough County during '82, '83, '84.

But as far as, as long as I've known Dick, and we've discussed this back then, he has always, always maintained his innocence. And I've known him. Like I said, even though he was convicted, and I believe in the jury system, a jury of six people found that he committed perjury. And I think he was placed on probation. And I think he's rehabilitated himself. And in a position like me, being a judge, I think that's what you try to find, that a person has rehabilitated himself, and can offer something to society. And that's why I think the last 10, 11, 12 years he may be able to offer something back to the legal community. That's why I'm here testifying on his behalf. If I felt he couldn't, I would be honest with you and tell you, he shouldn't be allowed to practice law. But I don't feel that way.

Q. So you believe in the jury system. Do you also believe that Mr. Leon Is innocent? Do you believe -- you say he maintained his innocence.

A. I believe in the jury system. I believe a jury convicted him, and that's it. If I was Mr. Leon, and I felt I was innocent, notwithstanding what a jury said, then I would have to abide by my own personal beliefs. But I'm a firm believer in the jury system.

MS. SCHNEIDER: Thank you.

MR. MILLER: Mr. Yates?

BY MR. YATES:

Q. Wasn't there a prosecutor called Merkel in Tampa?

A. Yes. Bob Merkel.

MR. MILLER: That's Mad Merkel, right?

THE WITNESS: Right. Mad dog. Right.

MR. YATES: That's all.

MR. MILLER: Mr. O'Neill?

MR. O'NEILL: No questions.

MR. MILLER: Mr. Cassel?

BY MR. CASSEL:

Q. Judge, are you testifying under a subpoena this morning?

A. Yes. Yes. If I can add to that, Mr. Cassel, the $12.50 that I was given, that's being donated to my guardian ad litem

program. Okay? Since I had to except [sic] payment, I figured I would donate it to one of our programs that needs money.

MR. CASSEL: Good purpose.

THE WITNESS: Thank you.

MR. MILLER: Mr. Kinney?

BY MR. KINNEY:

q. Did you have to be subpoenaed to come here?

A. Yes. Under the law I had to be subpoenaed, as a sitting judge. That's required by the judicial code of conduct. We cannot testify voluntarily unless we are witnesses to the facts, you know, we're an actual witness.

MR. CASSEL: That's why I asked the question.

THE WITNESS: Thank you. I appreciate it.

BY MR. MILLER:

Q. Your Honor?

A. Yes, sir.

Q. What was the standard proof required for the finding of perjury by the jury against the Respondent?

A. In the criminal case it's beyond a reasonable doubt.

Q. So, what you're saying is those jurors found that there was enough evidence to convict on a standard of beyond a reasonable doubt?

A. Correct. Yes.

MR. MILLER: Thank you.

MR. BROWN: Can I ask one question?

MR. MILLER: Yes.

BY MR. BROWN:

Q. Because you believe in the jury system, that does not extend to thinking it's infallible and it never makes a mistake?

A. Oh, no.

MR. MILLER: I didn't understand that question.

MR. BROWN: Because he believes in the jury system, his opinion doesn't extend to thinking it's infallible and it never makes mistakes.

MR. MILLER: And his response was?

THE WITNESS: No. It's not infallible. I think, if you look in the news media, things that occurred, convictions are being set aside year in and year out, cases that were 10, 12, 15 years old. There w as a murder case that I prosecuted that the

gentleman received the death penalty and he was on death row for about 15 years. And the testimony that we relied upon, the individual came back and recanted his story, again, 15 years later. I'm not happy that it took so long on death penalty cases, but in this instance had that not happened we might have executed an innocent person. But again, it took 15 years to find the fact that a person we convicted was indeed innocent. So, the jury system is not 100 percent. But I believe in it. The jury spoke, and he was convicted. That's the way I look at it.

MR CASSEL: I have another question.

BY MR. CASSEL:

Q. Judge, do you know if the conviction of perjury was appealed?

A. About a couple of weeks ago I pulled all the cases in reference to Mr. Leon and Mr. Merckle. And apparently it was appealed to the 2nd District Court of Appeals. And they upheld the two perjury convictions. And throughout the official misconduct, I believe, dealing with the third conviction as being unconstitutional. If it went any further, I couldn't find it. I know it went to the 2nd District Court of Appeal, and they confirmed the

convictions. But I don't know if it went to the Florida Supreme Court.

BY MR. COXE:

Q. Judge Alvarez, following your review of the recorded convictions, let me ask if you have any knowledge of talking to Mr. Leon of this subject. This is from page 1269. It says the record reflects that Judge Leon did not recant until after discovering that Judge Merckle was recanting. Do you have any knowledge of that subject?

A. No. I understand that came up as an issue back then. And I was trying to remember as much as possible. I never talked to -- again, once I was advised that I would possibly be a witness, I thought it would be better if I came to the testify without discussing anymore of the facts with Dick. But I remember back then that was the big issue on recanting, whether he recanted before Merckle talked to Tom McDonald and recanted his story. So, it was a big confusion back then. And I think back then I think it probably became a matter of an issue for the jury to decide. And I think, if I'm not mistaken, probably that was the main issue, if

there was a recantation, and if it was prior to Merckle or after Merckle. But I know it was an issue back then.

Q. But putting aside the general concept of the jury verdict versus the personal belief in one's own innocence, is it your understanding that it is absolutely true that Mr. Leon lied to Mr. McDonald about whether he had talked to Mr. Avery?

A. Do I know if it was true?

Q. Is that in dispute, that he had talked to Mr. Avery?

A. I don't know.

Q. Is it your understanding that there is any dispute that Mr. Leon later, in fact, recanted, he, himself said, I lied to Mr. McDonald of the Judicial Qualifications Commission?

A. Whether he's guilty of perjury or not?

MR. KINNEY: Excuse me. Are you talking about whether or not he was talking to Judge Merckle or to Avery?

BY MR. COXE:

Q. I'm talking, is there any dispute as you understand it, Judge Alvarez, that Mr. Leon lied to Mr. McDonald of the Judicial Qualifications?

A. All I know is he talked to Mr. McDonald. Okay? At some point in time there he went back to talk to Mr. McDonald. All right? And then that issue about whether Merckle had changed his story had anything to do with him, I don't know. That was a big issue. But I know he had two conversations, as I recall, with Mr. McDonald.

Q. As a general concept, recantation implicitly announces the pulling back what you originally said?

A. Yes. That's what recanting is. You recanted your prior sworn testimony.

MR. COXE: I have nothing further.

BY MR. KINNEY:

Q. At the time he talked to Mr. McDonald, was he under oath?

A. I don't know. Again, at the time, Mr. Kinney, there was a lot of stuff that we were reading in the newspaper. Okay? And, you know, there was a lot of conversations that, among people that you heard this, I heard that, you know. My conversations with Dick in reference to this whole thing is that, again, he never admitted to me that he violated any law. And he's always

maintained in conversations that I had with him back then that he was innocent. He's never wavered from that position. And again, the jury convicted him. The jury spoke. I believe in the jury system. And he's convicted. And I stand by that. I have feelings for Dick. But I think professionally I'm in the position that I believe in our jury system. And like I say, it does have flaws. And maybe this is a flaw. I don't know. But it's hard for me to -- maybe for you to understand that I believe in the jury system and believe Dick was innocent. But on everything that I've known, whether personal knowledge or hearsay, I think that's a possibility that might have occurred in this case.

MR. MILLER: Mr. Stewart?

MR. STEWART: I have no questions.

MR. MILLER: Mr. O'Neill?

BY MR. O'NEILL:

Q. Judge, did the volatility of the situation that you testified about here in Tampa at the time all this occurred have any influence on the jury, in your opinion?

A. No. I don't think it would have had any effect on the jury, Mr. O'Neill. I think the influence probably would have been the filing of the charges.

Q. Did Mr. Austin, I think, handle this case out of Jacksonville, another states attorney, as I recall?

A. Yes.

Q. And that was assigned by the governor, because of the volatility of the situation?

A. That's correct. That's correct.

MR. O'NEILL: That's all.

MR. MILLER: Any further questions of this witness?

BY MR. CASSEL:

Q. Judge, because of your years of experience on the bench, would you agree that it's not unusual for a person who's charged with a criminal offense who pleads that he is not guilty, and thereafter is found guilty by a jury, for that person to continue to maintain his innocence?

A. It happens quite a bit, Mr. Cassel.

Q. In the vast majority of cases, right?

A. I don't know if I can say the vast majority of them. But I would say it's at least 50 plus one.

Q. Percent?

A. On those cases, you know, that people convicted still maintain their innocence.

Q. At least it's safe to say that it's not unusual?

A. No. No. It's not unusual at all.

MR. CASSEL: Thank you.

MR. COXE: Judge, may I ask one additional question?

BY MR. COXE:

Q. Judge, I don't quarrel with that concept, after prosecuting and doing criminal defense work. When you're on the bench as a judge, and you found someone guilty, and you have formed an opinion that someone was innocent, as you had here --

A. I would throw it out.

Q. You would what?

A. I would throw it out.

Q. If a jury finds a person guilty, and you're in a jury trial, and the jury has found the defendant guilty, and you have formed an opinion that the defendant was innocent, what would you do?

A. It would have never gotten to the jury, Mr. Coxe. If I don't think that the prosecutor has presented his case, it will never get past directed verdict of acquittal, notwithstanding the type of case it may be. I think that's my sworn duty as a judge. And I think, you know, in some cases, maybe with political overtures, do get to juries where it shouldn't, where maybe the evidence isn't there. But if you apply the standard, it has to be beyond a reasonable doubt once the government or the state has rested its case. And me, as the trier of fact, have that legal responsibility to determine if I think that the state has met its burden. And at the end of their case when they have rested, it's my responsibility, as a judge, to at that point in time grant a judgement of an acquittal if the motion is made by the defense. You see, once a jury has come back, once you let it go to a jury, then I have already formed an opinion in my mind that the state has presented sufficient evidence to get the case to a jury. All right? But if I thought in my mind that once the state rested, if there was insufficient evidence, the jury would never have that opportunity.

MR. MILLER: Mr. Coxe, may I ask a question?

BY MR. MILLER:

Q. Judge Alvarez, are you saying you have never issued a JLD [sic]?

A. Oh, I have. I have.

Q. What you're saying is, I think, in answering Mr. Coxe's question is that at certain times there has been an issue that has gotten to the jury, you have let got to the jury, and that you have formed an opinion at some point between the time it got to the jury and they made their decision where you felt that the evidence wasn't there, and you have overruled them, notwithstanding the verdict?

A. That was only after there had been a motion for new hearing and newly discovered evidence had been filed. Okay. That's the only time. I have overridden a jury one time. And that was on a case that, again, I granted a motion for rehearing, and there was new evidence that was brought that was not available at the time of the trail. And I overrode the jury verdict and granted a new trial. Okay?

MR. MILLER: Yes, sir.

THE WITNESS: But I have never sat in a case where I've let it go to the jury and let it come back and granted judgment

of acquittal, notwithstanding the jury verdict, except this one particular time. But again, I had newly discovered evidence. But I was trying to answer Mr. Coxe's question, that after the state has rested, if I felt they had not met their burden, the case would have never gotten to the jury.

BY MR. MILLER:

Q. I understand.

A. The other thing is that, yeah, I have done it one time before. But those things --

Q. That's once in how many years on the bench?

A. 14.

Q. That's a pretty good record.

A. Yeah. Newly discovered evidence. There's not too many times that I find that there was newly discovered evidence that was not available at the time of the trial, if defense had used due diligence in getting that. It was available to everybody. But in this case there it happened. But that was once in 14 years.

MR. MILLER: Mr. Coxe?

MR. COXE: I have no other questions.

MR. MILLER: Mr. Kinney?

MR. KINNEY: Nothing further.

MR. MILLER: I think you may be excused, sir.

THE WITNESS: Thank you, gentlemen.

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DOCUMENT 8

Excerpts from Transcript

Testimony of Honorable Bob Anderson Mitcham
Pages 38-54

* * *

MR. MILLER: Sir, would you be sworn?

HONORABLE BOB ANDERSON MITCHAM, the witness herein, being first duly sworn on oath was questioned and testified as follows:

MR. MILLER: State you name for the record, please.

THE WITNESS: Bob Anderson Mitcham, M-i-t-c-h-a-m.

MR. MILLER: Mr. Brown?

BY MR. BROWN:

Q. What is your profession.

A. I'm a circuit judge, lawyer by trade.

Q. And how long have you been on the circuit bench?

A. I'm finishing my fourth year now. And I was admitted in 1963. I practiced 27 years before I was on the bench.

Q. Do you know the Applicant, Richard Leon?

A. Yes, sir.

Q. And how long have you known him?

A. A little more than 35 years.

Q. And in what capacity have you known him?

A. Law student, friend, business associate, trial lawyer, county judge, circuit judge.

Q. Have you ever represented him?

A. I represented him in the trial for which he's before this tribunal now. Co-counsel.

Q. Sir, so you are aware of his conviction and sentence?

A. Yes, sir.

Q. And you understand the general nature of the allegations?

A. Yes.

Q. Do you think that Mr. Leon has accepted the legal consequences of his conviction?

A. Yes.

Q. Do you think that Mr. Leon has accepted the legal consequences of his conviction?

A. Yes.

Q. Do you believe that he has no ill will or malice towards those who have prosecuted him?

A. He has no ill will.

Q. How would you describe Mr. Leon's character and moral standing?

A. He's been my friend for more than 35 years. As far as I'm concerned, his character is beyond reproach. He's been my friend all these years. And he's my friend now. His family is my friend. I had the pleasure of securing and adopting his youngest child for him. One of the finest family men that I've ever had the opportunity of knowing in my entire life, bar none.

Q. How would you describe his reputation for honesty, truthfulness, ethics and good character?

A. In the community in which I live his character is impeccable, and his truthfulness has never been questioned in the circles in which I am a part of.

Q. How would you describe his competency and ability to practice law, and his reputation as a lawyer?

A. Good lawyer. Thorough. Kind to his clients. Extremely conscientious. And considered to be a lawyer's lawyer in the area in which he worked.

Q. Are you satisfied that he would continue to conduct himself in such exemplary fashion?

A. No question in my mind about it. The answer is yes.

Q. If you are in a position to do so, I realize you are not, but if you are in a position to do so would you either hire or refer clients to him?

A. Certainly would, in both instances.

Q. In your representation of him at this trial, can you shed some light on your personal feelings of his innocence or guilt of the charges for which he was convicted?

A. This case, of course, got a lot of media attention because of former Judge Leon's position. And I was co-counsel in the case with another lawyer. I believe Mr. Johnson represented him before the JQC. And Mr. Leon told co-counsel and me what he remembered the facts to be. And we prepared our case accordingly. And he has never wavered from his position of what the facts were, and how they occurred. And in my representation of him I found him, contrary to what people say -- they say that lawyers and judges are the worst clients that you could possibly have -- but he was a good client. He never tried to inject himself in the preparation of his case or how it was tried. He simply cooperated with us to the fullest extent. And he always maintained that what he told us was

the truth. And I never had any reason to disbelieve him. We prepared our case and we tried it that way. And he has never changed in all these years, he has never changed what he said the facts were during all these years. I hope I have answered your question. Perhaps not fully.

Q. Do you think he's innocent?

A. I believe that he believes that what he said took place, and that certainly because he believes that, I believe it. And there's no question in my mind that he believes that's what took place. Now other people may also believe that they remember the facts differently. But after 27 years in the arena representing, I've had more than 200 jury cases, 30 capital cases before I ever went to the bench, so I know there's always two sides to every story. You can get a witness to testify to one thing one day and a week later or even a day later that witness may remember something different, and may see it a little bit differently. Yes. I believe him. Still do believe him.

Q. Pursuant to instructions from Judge Green, did you have Mr. Leon submitted to a lie detector test?

A. Sure did.

Q. What were the results?

A. He passed the polygraph. I picked what I considered to be the best in the business. And I took him over there. And after talking to Judge Green, Judge Green advised me that if former Judge Leon passed the polygraph, that he would withhold adjudication. And pursuant to his instructions, I made an appointment with this examiner, who came highly recommended by the State Attorney's Office and Tampa Police Department and the Sheriff's Department, who had no interest in this case whatsoever. And I took Mr. Leon over there. He passed the polygraph And I so advised Judge Green of that matter. And in the meantime I think the State of Florida had contacted him and said that they did not want to participate. But this was after the fact. So he had already passed the polygraph.

MR. BROWN: No more questions.

MR. MILLER: Mr. Coxe?

BY MR. COXE:

Q. Judge, my name is Hank Coxe from Jacksonville.

A. Good morning.

Q. Good morning. If he had passed the polygraph, which we could confirm would be one circumstance that would corroborate other people's belief that he was innocent, I believe you said the judge would withhold adjudication?

A. Told me directly he would.

Q. Why would he enter a plea in the first place if this confirmed it?

A. Why would he enter a plea? He didn't enter a plea.

Q. No. Why would he, before the benefit of withholding an adjudication of guilt, you said if he was convicted by the jury?

A. The jury had already come back.

Q. This was post jury verdict?

A. Yes.

Q. I apologize. I misunderstood. I though that was pretrial.

A. No.

Q. You mentioned his honesty in the community. And I'm assuming you're speaking of the community of people you know who also know him?

A. Yes, sir.

Q. There has been with Judge Alvarez, and in part with yourself, some discussion about the general community tenor in Tampa in the early 1980's. Judge Leon, Judge Merckle, I think we heard about three commissioners, et cetera, et cetera, a media frenzy, for lack of a better term. Do you have a feel for what the sense of the community is in this area of people who don't know him personally, having been convicted of two counts of perjury?

A. I must admit that I'm surprised at the people that don't know him in the legal community now. We have so many new lawyers that have come in, even in my court now, there are lawyers that come in that I have never seen before. I go to the Bar meetings, and I mean, I'm not just talking about a few. I'm talking about I look everywhere, and there are very few that I know.

Now, my friends, of course, I will be 61 tomorrow. And I know I'm considered now to be a senior member of the Bar, an elder member of the Bar. But I'm surprised. He will come to maybe have lunch with me, like he did last week, nobody even knows him. They don't speak to him. And if I introduce him, they say, hello. So to answer your question, I don't think many people remember former Judge Leon.

Q. I apologize. I'm asking the question more in terms of the public.

A. Could you restate the question?

Q. Certainly. Do you have a sense from the public general of people who don't know him personally that he is guilty of perjury?

A. Nobody ever mentions it to me. It never comes up. Does that answer your question?

Q. Certainly.

MR. COXE: I don't have anything else, Mr. Chairman.

THE WITNESS: May I go one step further? You didn't ask me this question, but I wish to interject this, if I might.

MR. COXE: Certainly.

THE WITNESS: Cody Fowler of Fowler-White was a dear friend of mine prior to the time he passed away. And Mr. Leon worked up there, I believe in the real estate section before, and when he went to law school. And Mr. Fowler was extremely fond of Mr. Leon. And one of the last things that we talked about before he passed away, even after he was put in a wheelchair, he always said that he hoped the Mr. Leon's situation would be set

straight some day, and that he would get his license back. he was a fine young man. And that comes from a man who was a greatly admired former president of the Florida Bar Association, and a friend of mine for many years.

MR. COXE: Did Mr. Fowler also believe Mr. Leon's innocence?

THE WITNESS: Absolutely.

MR. COXE: I don't have any further questions.

MR. MILLER: Mr. Cassel?

BY MR. CASSEL:

Q. Judge, I assume you're testifying under subpoena?

A. Yes, sir.

Q. I think the record should show that.

A. You didn't ask this, and nobody asked me this. But I wouldn't accept a fee for representing him. I want you to know that. And he couldn't pay me. He offered to pay me. And I wouldn't take it. And neither did co-counsel. And for all of that work, no remuneration was asked and none was ever received.

Q. What is your judicial circuit?

A. 13th, Hillsborough County. I'm assigned to the Criminal Justice Division.

MR. CASSEL: I have no further questions.

MR. MILLER: Mr. Stewart?

MR. STEWART: I have no questions.

MR. MILLER: Mr. O'Neill?

BY MR. O'NEILL:

Q. Did the volatility of the situation in the early 1980's when all this occurred have anything to do with the jury's temper or lack thereof or have anything to do with the result, if you know, or do you have an opinion?

A. We discussed the possibility of perhaps asking for a change of venue because of the high profile of this case. And, of course, we had Judge Merckle coming along at the same time. And we had the other matters going on. And it was just so much going on. We considered that if we were not able to get a jury within a certain time period, that we thought that Judge Green would change the venue. And yes, we did talk about it. And there was newspaper reporters everywhere we went. We couldn't walk out of our office door, there would be newspaper reporters. There

would be newspaper reporters in the courthouse. In fact, one time when we left the courthouse we literally had to push them out of the way. I believe at one time the son-in-law of former Judge Leon literally had to push the people out of the way so we could get out the door. That's how many people were involved in the case. And there was so much generated feeling about what was going on. It was like a circus at the time.

Q. Judge Green was the trial judge?

A. Yes.

Q. And Judge Green is the one that said that if you get a polygraph he would consider it in the sentencing?

A. He told me he would withhold adjudication if he passed the polygraph. Yes, sir.

Q. Did he withhold adjudication?

A. No, sir, he didn't, because the state, after we went to the polygraph examiner, the state notified him that they would not participate in that. In other words, they were objecting to it after he told me what he would do.

Q. Was the motion for a new trial made?

A. Yes, sir.

Q. Was it denied?

A. It was denied. And an appeal was taken. And in fact, I think I filed a motion to withhold adjudication, and set forth all of the facts and even the questions. We were able to secure a copy of that yesterday of my motion, which I have. And if you want it, it's here for you. My motion to Judge Green. This has all been buried in the archives. And they had to go look for it. It's entitled, Motion for Order Withholding Adjudication. It sets forth the questions Judge Green asked me to ask him. And it set forth what took place and how it was asked and what his answers were. And they're here for you if you want.

MR. MILLER: Mr. Brown, would you like to make that an exhibit?

MR. BROWN: I would offer that into evidence as Applicant's exhibit.

MR. MILLER: May I see that, please?

BY MR. O'NEILL:

Q. One further question, Mr. Chairman. Judge Mitcham, you were co-counsel for Mr. Leon, right?

A. Right.

Q. Who was the other counsel?

A. Henry Gonzalez.

Q. And Ed Austin was the prosecutor?

A. He was one of the prosecutors. Steven Koonce led the prosecutor team from Jacksonville. And Mr. Austin, I believe, came down and only -- I saw him one time beforehand. And I think he came down and argued at sentencing. But basically it was Mr. Koonce and another assistant out of the Jacksonville office.

MR. O'NEILL: I have nothing further.

MR. MILLER: Mr. Coxe?

BY MR. COXE:

Q. Could you take a look at that?

A. By the way, Mr. Koonce is the same Mr. Koonce, if you have been following in the newspapers, that's been involved in the prosecution of the county judge up in Jacksonville that committed suicide. The same Mr. Koonce.

MR. O'NEILL: I had been following the judge, but I didn't follow the attorney.

THE WITNESS: Yes, sir. He's the prosecutor there in that case. Eventually moved to the federal government's team.

MR. MILLER: Mr. Coxe, will you take a brief look at that and let me know if you have any objection to its introduction.

MR. COXE: Mr. Chairman, I have no objection to it. I see the signatures. I assume it's the originals or in the court files. I have no objection to it.

MR. MILLER: We will enter that as an exhibit.

MR. BROWN: Thank you, Mr. Chairman.

MR. COXE: That will be your first?

MR. O'NEILL: No I think the first is the application for clemency.

MR. COXE: No. That's the Board's.

MR. MILLER: We do have a group of exhibits for the Respondent here, for the Applicant. I don't know how many -- most of them are affidavits. I think this would be number 18. Are there any further questions of this witness?

MR. YATES: Yes.

BY MR. YATES:

Q. Judge, did you represent Mr. Leon prior to the time when he recanted what he had told Mr. McDonald?

A. I believe that I was representing him the, yes, or I had been called or contacted.

Q. Did Mr. Leon recant prior to Mr. Merckle or after or do you have any recollection?

A. My recollection is that he had recanted prior to Judge Merckle, because I remember getting a telephone call from Barry Cohen, who was representing Judge Merckle. And we had a conversation. At least that's my recollection of it. You're going back a lot of years.

MR. YATES: That's all I have.

MR. MILLER: Ms. Schneider?

BY MS. SCHNEIDER:

Q. As a public member, can you tell me whether or not it's your opinion that Mr. Leon's conviction was largely due to the influence of the media rather than facts?

A. It would be so easy for me to say yes, you know, because I so desperately want to help him, because he's my friend, and I believe in him. There's no question in my mind that media influences any high profile case. I would have to say in searching my soul that, yes, it had an influence on the situation. The while

feeling in Hillsborough County at that time was one of, let's nail everybody, you know, type of thing. And we had a, not an easy time to get a jury in this case. It was not easy. And, yes, I would have to say it did influence the case, as it does in so many other situations.

MS. SCHNEIDER: Thank you.

THE WITNESS: It may be not quite in response to your question, but I would like to add this, if I might. If I ever saw an individual that had suffered enough, it's this man. I do not know of any man, me included, and I'm a strong individual, that could have gone through what he's gone through with his children and his wife's illness, and left this country that he loved so much, and gone to medical school in Mexico, not knowing if he'll ever get a license, and doing all that, and coming back and maintaining his standards. I don't know of many people who could have done that. I want y'all to understand, this is a good man. This is not just an average every day individual. And I know that he's been convicted. And I know the jury convicted him of perjury. But I believed him then, and I believe him now. And he has suffered enough. This is a good lawyer, and a good man. I'm proud to call

him my friend. I don't mind telling any of you that. And he's always welcome in my home. And he can come to work with me any time. I just want to make my position clear.

MR. MILLER: Are there any further questions of this witness? Thank you, Your Honor.

THE WITNESS: Thank you. And thank you for allowing me to get out so quickly.

MR. CASSEL: Happy birthday.

THE WITNESS: Good morning.